# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IVAN G. MCKINNEY,

Plaintiff,

-against-

WARWICK NEW YORK VILLAGE POLICE DEPARTMENT, ET AL,

Defendants.

USDC SDNY
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23-cv-10405 (NSR)

MEMORANDUM & ORDER

NELSON S. ROMÁN, United States District Judge:

*Pro se* Plaintiff Ivan G. McKinney's ("Plaintiff"), by application filed February 14, 2025, seeks appointment of *pro bono* counsel. (ECF No. 25.)

Unlike in criminal proceedings, the Court does not have the power to obligate attorneys to represent indigent *pro se* litigants in civil cases. *See Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 308–09 (1989). Instead, pursuant to 28 U.S.C. § 1915(e)(1), the Court may, at its discretion, order that the Pro Se Office request an attorney to represent an indigent litigant by placing the matter on a list circulated to attorneys who are members of the Court's pro bono panel. *See Palacio v. City of New York*, 489 F. Supp. 2d 335, 344 (S.D.N.Y. 2007).

The Second Circuit set forth the standards governing the appointment of counsel in *pro se* cases in *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997), *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989), and *Hodge v. Police Officers*, 802 F.2d 58, 60–62 (2d Cir. 1986). These cases direct the district courts to "first determine whether the indigent's position seems likely to be of substance," *Hodge*, 802 F.2d at 61, and then, if this threshold is met, to consider "secondary criteria," including the *pro se* litigant's "ability to obtain representation

independently, and his ability to handle the case without assistance in the light of the required factual investigation, the complexity of the legal issues, and the need for expertly conducted cross-examination to test veracity." *Cooper*, 877 F.2d at 172; *accord Hendricks*, 114 F.3d at 392 (quoting *Hodge*, 802 F.2d at 61–62). "Even where the claim is not frivolous, counsel is often unwarranted where the indigent's chances of success are extremely slim," and the Court should determine whether the *pro se* litigant's "position seems likely to be of substance," or shows "some chance of success." *Hodge*, 802 F.2d at 60-61.

The proceedings are still in their early stages, and the parties have yet to enter discovery or make dispositive motions. Thus, the Court is unable to conclude that *pro se* Plaintiff cannot handle the case without assistance, although this conclusion may change as the action progresses. Furthermore, the Court still cannot ascertain whether *pro se* Plaintiff's position shows a strong chance of success, nor whether the legal issues in this case are particularly complex.

Therefore, because the Court does not find any circumstances which warrant the appointment of pro bono counsel *at this time*, *pro se* Plaintiff's motion is DENIED without prejudice to renew at a later stage in the proceedings. The Clerk of Court is respectfully directed to terminate the motion at ECF No. 25, to mail a copy of this Order to *pro se* Plaintiff at his address as listed on ECF and to show service on the docket.

Dated: April 10, 2025

White Plains, New York

SO ORDERED:

NELSON S. ROMÁN United States District Judge

## FEDERAL PRO SE LEGAL ASSISTANCE PROJECT

in the Southern District of New York (SDNY)



#### ABOUT THE PROJECT

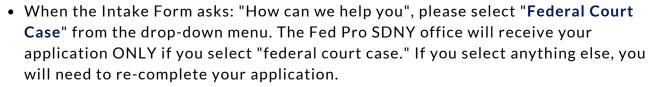
The Federal Pro Se Legal Assistance Project (Fed Pro) provides limited assistance to selfrepresented litigants (plaintiffs and defendants) with cases involving civil legal matters in the United States District Court for the Southern District of New York (SDNY).

#### **HOW TO SCHEDULE AN APPOINTMENT**

To schedule an appointment for assistance with City Bar Justice Center's Fed Pro project, you must first complete our online Intake Form.

- Our online Intake Form is accessible via one of these methods:
  - Scan the QR code to the right.
  - Go to bit.ly/prosesdny





Once you complete the form, someone will contact you, usually within five business days, to schedule an appointment. If you are not able to complete the Intake Form, please call (212) 382-4794, leave a detailed message, and wait for us to call you back, typically within five business days.

### **HOW WE HELP**

While we cannot provide full representation, we can assist litigants by providing limited-scope services such as:



**Counseling** about potential federal claims prior to filing suit



**Interpreting and explaining** federal law and procedure



Consulting on **discovery** matters



Assisting with the **settlement** process (including mediation)



Reviewing drafted pleadings and correspondence with the Court